

1-1-2004

## Child Laborers: The World's Potential Future Labor Resources Exploited and Depleted

Rupneet Sidhu

Follow this and additional works at: <https://repository.uchastings.edu/hwlj>



Part of the [Law and Gender Commons](#)

---

### Recommended Citation

Rupneet Sidhu, *Child Laborers: The World's Potential Future Labor Resources Exploited and Depleted*, 15 Hastings Women's L.J. 111 (2004).

Available at: <https://repository.uchastings.edu/hwlj/vol15/iss1/3>

This Note is brought to you for free and open access by the Law Journals at UC Hastings Scholarship Repository. It has been accepted for inclusion in Hastings Women's Law Journal by an authorized editor of UC Hastings Scholarship Repository. For more information, please contact [wangangela@uchastings.edu](mailto:wangangela@uchastings.edu).

# Child Laborers: The World's Potential Future Labor Resource Exploited and Depleted

Rupneet Sidhu\*

*Imagine, day after day . . .*

. . . a 7-year old child wakes up at six in the morning to begin a 14-hour work shift transporting baked bricks over a 5-kilometer stretch . . . or buffing lock components without any hand, face, or eye protection.<sup>1</sup>

. . . a 12-year old child wakes up at three in the morning to work until two in the afternoon in the broccoli fields using a broccoli-harvesting knife in a low-stoop posture causing severe back pain for rest of the day.<sup>2</sup>

*This is the reality for many children.*

## INTRODUCTION

Any labor performed in oppressive conditions and at excessive length destroys the physical health of a child in his or her developmental stage of life.<sup>3</sup> Along with physical deformity, a child forced into exploitative labor

---

\* J.D. Candidate, May 2004, University of California, Hastings College of the Law; B.B.A., 2001, University of Wisconsin, Milwaukee. To Kamal, my refuge, and Navneet, my coach, my deepest gratitude for *being* and letting me *be*. To those who inspire important insignificance, my utmost respect. To the *HWLJ* team, my special thanks.

1. See NEERA BURRA, BORN TO WORK: CHILD LABOUR IN INDIA (2d ed., Oxford India 1998) (1995). Situation adapted from captions of pictures in the book. The pictures accompanied Ms. Burra's case studies of child labor in various Indian industries.

2. See Lee Tucker, Summary of *Fingers to the Bone: United States Failure To Protect Farmworkers Children* 1 (Jan. 1, 2000), HUMAN RIGHTS WATCH (Report), <http://www.hrw.org/reports/2000/frmwkr/frmwkr006.htm> (last accessed Oct. 10, 2003) [hereinafter HRW Report 2000]. Situation adapted from testimonies collected by the HRW report's author.

3. DAVID WEISSBRODT ET AL., INTERNATIONAL HUMAN RIGHTS LAW: LAW, POLICY, AND

is deprived economically, nutritionally, and educationally.<sup>4</sup> All of these factors are closely related, sometimes acting as causes and other times as effects of child labor. Most often, the call to eradicate child labor is dismissed as secondary to eradication of poverty, "which often leads to immobility in face of the problem" since eliminating poverty is a "daunting task" in and of itself.<sup>5</sup> The task of eliminating child labor, however, cannot be as daunting for adults as the hazardous work children perform everyday around the world.

Traditionally, children's issues have been part of adult agendas, and nations are unlikely to provide children with a direct forum to voice their concerns. Although child laborers, especially the ones working under hazardous conditions throughout the world, eventually figure into the adults' and nations' agendas, to keep these child labor issues a priority, the agenda authors need constant reminders. We have to acknowledge and accept child labor as an urgent human rights problem prevalent both in the developing and developed nations.<sup>6</sup> Currently, the reality reflects an unchecked exploitation and rapid depletion of the world's future labor force. Simply put, if children are "crucial to the future well-being of any society,"<sup>7</sup> then children's rights need to be concrete to remedy the deplorable reality of child laborers effectively around the world.

Section I of this Note discusses the background and content of the international instruments, in particular the United Nations' rights instruments and mechanisms, which show the international community's commitment and pledge to eliminate the hazardous working conditions and exploitative terms of child labor. Sections II through IV examine the child labor situation in two different countries, India and the United States of America, as examples of child labor policy in both developing and developed countries.<sup>8</sup> Section II examines the effect of international instruments and the adequacy of the national laws in India and the United States, while section III suggests a blueprint of action the two countries can

---

PROCESS 944 (3d ed. 2001) [hereinafter WEISSBRODT].

4. See generally *id.* at 909-10 (discussing possible causes and effects of child labor and the importance of considering children's nutritional and educational needs along with economic status).

5. *Id.* at 944.

6. See *id.* at 910. "Though primarily a developing country problem, child labor also exists in many industrialized countries . . ." *Id.* Before any action remedying child labor can be effective, adults and nations have to acknowledge that assuming "child labor only happens in the poor world" is erroneous and counter-productive. *Id.* at 915. Child labor, in both developed and developing nations, is assessed by the "nature of the work children do" not by the harm it causes them. *Id.* See also *infra* text accompanying notes 56-60.

7. WEISSBRODT, *supra* note 3, at 910.

8. I have chosen India to represent as an example of how one of the developing nations deals with the child labor problem. Additionally, United States represents a developed nation's way of handling child labor issues. "Although [child labor] is often perceived as a problem only in poor countries, it is of renewed concern even in more wealthy countries such as United States." WEISSBRODT, *supra* note 3, at 944.

need to take to expedite the process of eliminating child labor. Finally, Section IV traces the indispensable role non-governmental organizations (NGOs) play in eliminating exploitative and hazardous child labor conditions. The conclusion re-emphasizes the overall need for action.

## I. INTERNATIONAL COMMUNITY DECLARES FUNDAMENTAL RIGHTS OF CHILDREN AND PLEDGES TO ELIMINATE CHILD LABOR

Although children frequently are overlooked in policy-making decisions, Juan Somavia, the current director-general of the International Labour Organization (ILO) says, "The effective abolition of child labor is one of the most urgent challenges of our time and should be a universal goal."<sup>9</sup> To view the dilemma in economic terms, if we continue to exploit children's labor today, then we deplete and lose our future labor force.

The international community has collectively vowed to let children be children without minimizing their fundamental human rights. One such fundamental right recognized is that every child has a right to grow, free from economic and social exploitation. Additionally, children's education is a critical tool that can help eliminate child labor and assure better success of the future labor force. International instruments, which offer legal rights and protections in addition to national laws affecting child laborers, may not in reality have the same implementation and enforcement capability of national laws. Nonetheless, in this increasingly globalized and interconnected world, international laws and organizations play important and influential roles.

### A. THE MAGIC WORDS: UNITED NATIONS' RIGHTS CONFERRING INSTRUMENTS

Although human rights instruments broadly recognize rights of citizens, special emphasis is needed on the rights children, which by nature are traditionally left out of the decision-making process.<sup>10</sup> The following instruments highlight and reaffirm the rights of children.

#### 1. The Two General Rights Covenants

In 1976, both the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ECOSOC) came into force.<sup>11</sup>

---

9. INTERNATIONAL LABOUR OFFICE Press Release, *ILO Global Report on Child Labour Cites Alarming Extent of its Worst Forms* (2002), at [http://www.ilo.org/public/english/standards/decl/newsroom/press/child\\_labour.htm](http://www.ilo.org/public/english/standards/decl/newsroom/press/child_labour.htm) (last access Nov. 21, 2003) [hereinafter *Press Release on Global Report 2002*].

10. WEISSBRODT, *supra* note 3, at 909.

11. DAVID WEISSBRODT ET AL., *SELECTED INTERNATIONAL HUMAN RIGHTS INSTRUMENTS AND BIBLIOGRAPHY FOR RESEARCH ON INTERNATIONAL HUMAN RIGHTS LAW* 36, 28 (3d ed. 2001) [hereinafter *INSTRUMENTS*].

Children in general and child laborers in particular can find protection under the ICCPR provisions. For example, Article 8 specifically prohibits slavery or slave trade, servitude, and forced or compulsory labor.<sup>12</sup> And Article 24 generally provides each child with the "right to acquire a nationality," a name, and obtain protection by his or her family, society, or the State without discrimination.<sup>13</sup> ECOSOC provisions protect children as well. For instance, Article 10(3) emphasizes that States should set minimum age limits and protect children from "economic and social exploitation" by attaching legal, punishable consequences when children are employed in places dangerous to their morals, health, life and normal development.<sup>14</sup> Furthermore, a child has a right to free and compulsory primary education, either to be implemented immediately or through a progressive implementation within a reasonable timeframe, as per Articles 13 and 14.<sup>15</sup>

The provisions of ICCPR and ECOSOC clearly prohibit egregious kinds of child labor and present a broad framework for ensuring fundamental rights to children. While these instruments provide a good starting point, they alone are not sufficient to prevent today's child labor problems. To give recognition or find a solution to the problem, we need additional international instruments oriented specifically to children's issues.

## 2. Children's Convention

Realizing persistence of child labor problems, the international community saw the need to provide a more detailed and focused framework to protect children. A whole instrument devoted to the rights of children came in the form of the Convention on the Rights of the Child (CRC), which entered into force on September 2, 1990.<sup>16</sup> The tremendous success of CRC is evident from the ratification of the instrument by more than 190 United Nations' member-states, making it the most "widely adopted international human rights treaty in history."<sup>17</sup> The preamble of CRC states that it aims to incorporate "universally agreed set[s] of standards and obligations [that] place children" at the center of the pursuit for a "just, respectful and peaceful society."<sup>18</sup> Article 1 defines a child as

---

12. *Id.* at 38-39.

13. *Id.* at 43. Language of Article 24(1): "Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measure of protection as are required by his status as minor, on the part of his family, society and the State."

14. *See id.* at 31.

15. *Id.* at 32-33.

16. *Id.*

17. United Nations Children's Fund UNICEF, *The Convention On The Rights Of The Child*, available at <http://www.unicef.org/specialsession/rights/index.html> (last accessed Oct. 6, 2003) [hereinafter UNICEF].

18. *Id.*

"every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."<sup>19</sup> This acknowledges children as human beings, and not simply human beings-in-the-making.<sup>20</sup>

Other provisions in the CRC emphasize a full range of human rights for all children based on principles of "non-discrimination, best interests of the child . . . right to life, survival and development . . . respect for the views of the children," and the right "to participate fully in family, cultural and social life."<sup>21</sup> For example, Article 15 provides for freedom of association, Article 19 provides for protection from injury, abuse and exploitation, Articles 32 and 34 provide for protection from economic and sexual exploitation, and Article 28 provides for the right to education including free compulsory primary education.<sup>22</sup>

The CRC specifically recognizes children as group that were traditionally denied a direct forum to voice its concerns and lays out a framework for their basic human rights. Notwithstanding the provisions that clearly require a ban on exploitative labor performed by children, these words alone are powerless to protect without actual implementation and effective enforcement.

#### B. THE IMPLEMENTATION MECHANISM: INTERNATIONAL LABOR ORGANIZATION

The ILO came into being through the Treaty of Versailles.<sup>23</sup> It "became the first specialized agency" of the United Nations in 1946, and was responsible for addressing the social and labor questions.<sup>24</sup> ILO's unique tripartite system puts "the representatives of workers and employers, on an equal footing with those of governments, to take part in all discussions and decision-making."<sup>25</sup> Furthermore, ILO: 1) allows non-governmental actors to participate fully; 2) offers regular monitoring reports and observations on those reports; and 3) provides an ad hoc procedure to handle acute violations.<sup>26</sup> This supervisory and advisory role works because of its unique partnerships and implementation programs. It seems, consequently, this system would make it easier for the ILO to provide the member-states with an effective mechanism to implement the

---

19. INSTRUMENTS, *supra* note 11, at 88 (emphasis added).

20. See WEISSBRODT, *supra* note 3, at 909.

21. UNICEF, *supra* note 17.

22. A. FYFE & M. JANKANISH, INTERNATIONAL LABOUR OFFICE, TRADE UNIONS AND CHILD LABOUR: A GUIDE TO ACTION (1997), at 82-83 [hereinafter FYFE].

23. WEISSBRODT, *supra* note 3, at 924.

24. *Id.*

25. *Id.* at 925. See also *id.* at 930.

26. International Programme on the Elimination of Child Labor, *Frequently Asked Questions about Convention No. 182 and Recommendation No. 190 on the Worst Forms of Child Labour* (Sept. 11, 2002), at <http://www.ilo.org/public/english/standards/ipecc/about/factsheet/faq.htm> (last accessed Oct. 2, 2003) [hereinafter IPEC].

words that were agreed upon.

One of ILO's major guiding principles, outlined in the Labor Charter, includes abolition of child labor.<sup>27</sup> The goal is to convince the member-states to implement its policies and confirm the commitment through ratification of conventions and recommendations.<sup>28</sup> The International Labor Conference adopts the "text of the new instrument" and sends it to all member-states to adopt it.<sup>29</sup> Even though member-states might not adopt and ratify a convention or recommendation right away because of economic or social constraints, governments might still have a tendency to forget about it even after economic and social development permits ratification.<sup>30</sup> Therefore, ILO strategically chooses to focus on a few fundamental conventions and recommendations, and promotes widespread adoption to them through intensive campaigning.<sup>31</sup> In 1999, ILO, along with one of its special offices, stepped up the efforts to eliminate child labor by focusing on a worldwide adoption of Convention 182, which urgently calls for the elimination of the worst forms of child labor.<sup>32</sup>

#### C. A MOBILIZING MECHANISM: INTERNATIONAL PROGRAMME ON THE ELIMINATION OF CHILD LABOR

In 1992, ILO created a special office, International Programme on the Elimination of Child Labor (IPEC), to support its efforts to universally mobilize actions against child labor.<sup>33</sup> This new special office's task was always self-evident from its ambitious title.

##### 1. The Participants: Laborers, Employers, and NGOs

The use of "political will and commitment of individual governments to address child labor -- in cooperation with employers' and workers' organizations, non-governmental organizations and other relevant parties in society -- is the basis for IPEC action."<sup>34</sup> The participation of employers, although direct culprits in the child labor problem, is "crucial in the combat against child labor."<sup>35</sup> The involvement of NGOs, closely working with the affected children, is imperative as well. They can help promote self-

---

27. WEISSBRODT, *supra* note 3, at 924.

28. IPEC, *supra* note 26. Note that recommendations are considered 'soft law' as opposed to 'hard law' in the form of treaties.

29. WEISSBRODT, *supra* note 3, at 924, 928 (internal quotations omitted).

30. *See id.* at 929.

31. Recent efforts include: adoption of the forced labor Conventions 29 and 105, the freedom of association and collective bargaining Conventions 87 and 98, the non-discrimination Conventions 100 and 111, and the minimum age Convention 138. IPEC, *supra* note 26.

32. *See infra* Part I.D.

33. *See generally* WEISSBRODT, *supra* note 3, at 951.

34. WEISSBRODT, *supra* note 3, at 952. International Programme on the Elimination of Child Labor (IPEC) was launched in 1992 as a single donor programme with 6 participating countries. *Id.* at 951-2.

35. *Id.* at 954.

organizing, planning, and implementing the action programs.<sup>36</sup>

## 2. IPEC's Role: Persuading Member-States and Customizing Implementation

Signing a memorandum of understanding with the ILO allows IPEC to begin helping and working with the member-states.<sup>37</sup> IPEC provides flexible and customized help to participating countries because the "struggle against child labor must be rooted in each country's own culture, institutions and aspirations."<sup>38</sup> It cuts through the one-size-fits-all written instruments to provide an implementation mechanism that is more likely to be effective in each particular culture or nation. In conjunction with its customizing strategy, IPEC makes a broader effort "to empower [the children and their families] through awareness, participation and organization."<sup>39</sup> In its staggered approach of "phased elimination of child labor," IPEC recognizes the resource constraints of the member-states, and emphasizes support for national efforts that: 1) build "permanent capacity" to overcome the child labor problem; 2) eradicate the "most hazardous and exploitative types of child labor"; and 3) implement preventative measures.<sup>40</sup>

A recent report commended IPEC's significant growth, and effective national and regional programs.<sup>41</sup> For example, IPEC developed innovative models to effectively remove children from performing hard labor, and gathered reliable statistical data worldwide.<sup>42</sup> Moreover, its shift in emphasis from "deliverer of operational programmes to a catalyst, facilitator and advocate for child labour cause is expected to continue and intensify."<sup>43</sup> Notwithstanding IPEC's decade of effective work, the report highlights that almost 180 million children between the ages of 5 and 17 are exposed to the worst forms of child labor, endangering their physical and mental well being.<sup>44</sup>

The IPEC constantly adapts its standards to cover the wide-ranging faces of child labor that exist in the world. These measures, however,

---

36. *Id.*

37. *See id.* at 952.

38. *Id.* at 954.

39. *Id.*

40. *Id.* at 951.

41. INTERNATIONAL LABOUR OFFICE, *A Future Without Child Labour, Global Report Under The Follow-up To The ILO Declaration On Fundamental Principles And Rights At Work*, 119 (2002),

<http://www.ilo.org/public/english/standards/decl/download/global3/part3/pdf> (last updated Feb. 14, 2003). Germany was the single donor at IPEC's beginning, but now IPEC has expanded to include operations over 90 countries, which are funded by 26 donors. India was one of the first nations to sign a memorandum of understanding with the ILO back in 1992. *See id.* and WEISSBRODT, *supra* note 3, at 951-52.

42. WEISSBRODT, *supra* note 3, at 953.

43. *Press Release on Global Report 2002*, *supra* note 9.

44. *Id.*



require the support from the member-states, which need to ratify the ILO conventions to show commitment, and then make a good-faith promise and effort to implement the accompanying recommendations.

D. AN EXAMPLE OF INTERNATIONAL COMMUNITY'S EFFORTS TO  
ELIMINATE CHILD LABOR: CONVENTION 182 AND  
RECOMMENDATION 190

1. Adoption of the Instruments

On June 17, 1999 at the annual International Labor Conference, 174 member-states of the ILO unanimously voted for the adoption of another child labor instrument: Convention 182 titled "Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor."<sup>45</sup> It represents the international community's first effort to "define the specific types of labor to which children under the age of 18 should not be subjected as a matter of law."<sup>46</sup> At the conference, the substance of Convention 182 was seen as urgent and Article 1 urged member-states to take "immediate and effective measures to secure the prohibition and elimination of the worst forms of child labor."<sup>47</sup>

On the same day, Recommendation 190, a nonbinding document, was adopted. This document called upon the member-states to protect the children from hazardous labor, provide rehabilitation to children who are rescued, and to prevent retaliation.<sup>48</sup>

2. Provisions in the Instruments

Article 3(d) of Convention 182 and Part II of Recommendation 190 define what "hazardous work" entails.<sup>49</sup> Even though the member-states have authority to designate what particular areas or types of work are hazardous, the guidelines in Recommendation 190 clearly indicate that "unhealthy environment" and difficult working conditions in any area of work that employs children should be considered hazardous.<sup>50</sup> Work, which requires a child to buff lock components without protection gear or spend long hours hunched over cutting broccoli, seem self-evidently hazardous because of the present and subsequent serious, disabling physical effects involved. Applying the definitions and standards of the two instruments, it is possible to construe the above-described work to be one of the worst

---

45. Teresa Y. Reeves, *Harvest of Danger: The Child Farmworker in the United States*, HUM. RTS. BRIEF, Winter 2001, at 12. See also WEISSBRODT, *supra* note 3, at 954.

46. *Id.*: "In addition to banning child slavery, the forced recruitment of children for armed conflict, child prostitution, and the use of children in drug trafficking."

47. *Id.*

48. INTERNATIONAL LABOUR OFFICE, *Proposed Recommendation Concerning the Prohibition and Immediate Action for Elimination of the Worst Forms of Child Labor*, at 11-14, Int'l. Labour Confl., Rep. IV(1) (Jun. 17, 1999) [hereinafter *Eliminate Worst Forms*]

49. *Id.*

50. *Id.*

forms of child labor.

#### E. INTERNATIONAL EFFORTS AND COMMITMENT ALONE ARE NOT ENOUGH

International efforts, at least, help to get the child labor issue recognized widely. So far the international efforts and commitments have: 1) highlighted the importance of children's fundamental human rights; 2) catalyzed a successful partnership of the ILO and the IPEC to raise awareness and encourage implementation of the instruments eliminating child labor, its most hazardous and worst forms first; and 3) helped to make rights concrete by providing detailed guidelines. Yet, this alone is not sufficient. Throughout the world, children are trapped in horrendous forms of labor, such as "forced labor, debt bondage, prostitution, pornography," and many other subtle kinds of labor that still "cause lasting damage and immediate dangers" to their lives.<sup>51</sup> To eliminate this, the cooperation and uncompromising national efforts of all member-states is essential.

#### II. SAME DIFFERENCE? EXAMPLES FROM DEVELOPING AND DEVELOPED NATIONS

Although child labor is widespread in developing nations, it is also prevalent in developed nations, too.<sup>52</sup> Children do work in some capacity in most, if not all, countries, but it is "the *nature* of the work children do that determines whether . . . they are harmed by it -- not the plain fact of their working" or being part of a developing or developed economy.<sup>53</sup>

Moreover, Peter Dorman, a scholar in international labor issues, says that child labor problems faced in developing and developed nations are "qualitatively similar . . . and require comparable policy responses."<sup>54</sup> Others have commented that although all areas of government policy affect children in our society, many nations traditionally have failed in taking children's issues into account.<sup>55</sup> In fact, governments' inaction and "short-sighted" approaches to policymaking "ha[ve] a negative impact on the future of all members of society" when establishing policies that are doomed to fail.<sup>56</sup>

---

51. WEISSBRODT, *supra* note 3, at 910: All child labor is a "denial of the right to education and of opportunity to reach full physical and psychological development."

52. See *supra* note 6 and accompanying text.

53. *Id.* at 915 (emphasis added). See *id.* at 910.

54. Peter Dorman, *Child Labour In The Developed Economies* (ILO-IPEC Report) 49 (Jan. 2001), <http://www.globalmarch.org/virtuallibrary/ipec/researchpaper1.pdf> (last accessed Mar. 10, 2003). The author notes that the similarity also serves as a reminder to "us that general economic development does not reach all social groups evenly and so, even in the best of cases, cannot be regarded as magic cure." *Id.*

55. WEISSBRODT, *supra* note 3, at 909.

56. *Id.* Any national policy aimed to abolish child labor should prioritize to help "the most vulnerable children" by focusing on the "most intolerable forms of child labor." *Id.* at 910.

This section focuses on national policies and adoption of international instruments by India and the United States. These countries provide an interesting contrast of how the national statistics or the nation's exposure to the child labor problem ultimately affects the perception of how the nation deals with its child labor problem. Despite the differences in their child labor statistics, where India has a larger percentage of child laborers than United States,<sup>57</sup> these two countries' legal protections, or lack thereof, warrant particular attention.

#### A. A RAMPANT CHILD LABOR PROBLEM AND SCANT LEGAL PROTECTION IN INDIA

Child labor is by no means a new problem in India. Although the Government of British India ratified an ILO convention in 1919,<sup>58</sup> it wasn't until more than half a century later, in 1985, that the issue of child labor was thrust back into public discussion as a result of a Bangalore-based NGO stirring debate around a bill related to child labor.<sup>59</sup> This event and the continuous efforts of other NGOs with a media partnership have subsequently kept the issue alive.<sup>60</sup>

##### 1. The Child Labor (Prohibition and Regulation) Act of 1986

The 1985 debate around the bill highlighted two schools of thought: 1) the government's argument to simply regulate child labor, and 2) non-governmental sector's argument to completely prohibit child labor.<sup>61</sup> On December 23, 1986, the Indian Parliament enacted the Child Labor (Prohibition and Regulation) Act (1986 Act).<sup>62</sup> The "prohibition and regulation" phrase in the title of the Act might suggest a successful compromise between the two schools of thought, but that would be, and is, misleading.

Moreover, the 1986 Act's provisions erroneously relied upon a worldview of child labor that did not reflect the reality at the time of its enactment. For example, the Section 3 of the 1986 Act is similar to a family labor exception that already existed in the Employment of Children Act of 1938.<sup>63</sup> The Section 3 states that the prohibition of employment of children will not apply to places where work "is carried on by the occupier

---

57. A 1996 Human Rights Watch Report estimated working children in India between 60 to 115 million, at <http://www.hrw.org/reports/1996/India3.htm>. A 2000 Human Rights Watch Report estimated children farmworkers in the U.S. between 300,000 to 800,000, at <http://www.hrw.org/campaigns/crp/farmchild/facts.htm>. It is worth noting that the world statistics on the number of child laborers vary depending on the sources.

58. BURRA, *supra* note 1, at 3, 5.

59. *Id.* at 1.

60. *Id.*

61. *See id.* at 2.

62. *Id.*

63. *Id.* Interestingly, the 1938 Act is repealed in section 22 of the 1986 Act only to incorporate its substance in newer words.

with the aid of his family.”<sup>64</sup> In essence, the 1986 Act was the new name to earlier, ineffective legislation. Giving new names to old problems, however, does not provide a solution.

## 2. 1986 Act: Its Loopholes

The 1986 Act is the prime piece of legislation that purports to combat child labor. During its enactment, it stirred a national debate around the child labor issue, but its substance contains several legal and procedural loopholes.

First, a miscalculated assumption of the 1986 Act is that the abolition of child labor is impossible as long as poverty exists.<sup>65</sup> By implication, work on eliminating child labor becomes secondary to the elimination of poverty. Despite the importance of eradicating poverty, unexceptionable assertions that child labor is caused by poverty deflects “attention from the quiescence and inactivity of the state,” which benefits from the status quo, and masks the “systematic exploitation of children.”<sup>66</sup> Many would argue, to the contrary, that child labor “reinforces, if not creates, poverty”<sup>67</sup> when “a working child grows into an adult trapped in unskilled and badly paid jobs.”<sup>68</sup> The lax labor laws allow the cheap child labor market to exist in the first place and create poverty in the laborers’ families. Additionally, when poverty is labeled as the cause of child labor, it ignores that child labor is “not an economic compulsion of all poor families.”<sup>69</sup> All these different opinions stem from the same data and each focuses on a causal relationship as the source of the problem. Consequently, the cumulative effect of both poverty and child labor on the society is sidestepped. Therefore, India needs a national policy that addresses poverty and child labor simultaneously.

Second, the 1986 Act has a very limited protective scope because it provides for an exception to family-based enterprises, especially in agriculture, which employ child laborers. This erroneously assumes that as long as a “child is not *forced* to work in an exploitative environment,” no legal action need be taken.<sup>70</sup> Such relaxed standards and delay in remedy provide no protection to child laborers. The law needs a more preventative approach.

Finally, the 1986 Act fails to provide adequate implementation and enforcement of law, along with inadequate rehabilitation options for

---

64. *Id.*

65. MINISTRY OF LABOUR OF INDIA, *Report of the National Commission on Labour* 1027 (2002), <http://labour.nic.in/lcomm2/2nlc-pdfs/Chap-9partB.pdf> (last accessed Oct. 7, 2003) [hereinafter MINISTRY OF LABOUR Report].

66. BURRA, *supra* note 1, at 243. See also, WEISSBRODT, *supra* note 3, at 916.

67. *Id.*

68. WEISSBRODT, *supra* note 3, at 916.

69. MINISTRY OF LABOUR Report, *supra* note 65, at 1017.

70. *Id.* at 1027 (emphasis added).

children. For example, the Act's focus on "cleansing the establishments" of child labor, although noble, leaves the rescued children with no real options or restitution.<sup>71</sup> Also, the Act leaves the actual implementation and enforcement of laws to state bureaucracies within India, who compete with one another and see no immediate incentive to alleviate the child labor problem.<sup>72</sup> A particular instance of the 1986 Act's ineffectiveness in the Indian culture is when the prosecutor carries the burden of proving the child laborer's age<sup>73</sup> where even if the employer carried this burden, the lower-level governmental officials can be bribed to produce forged birth certificates. Additionally, even if an employer employs a child in contravention of Section 3 provisions of the Act, Section 14 renders minimal punishment on the culprit.<sup>74</sup>

### 3. A Decision by the Supreme Court of India

Notwithstanding the loopholes of the 1986 Act, the Supreme Court of India passed an encouraging decision in *Mehta v. State of Tamil Nadu*, stating:

In order to fulfil the legislative intent behind the Child Labour (Prohibition and Regulation) Act 1986, the offending employer would be required to pay compensation for every child employed in contravention of the provisions of the Act in the amount of Rupees 20,000, which would be deposited in a child labour rehabilitation-cum-welfare fund, and compliance with the court's direction would be monitored by inspectors appointed under the Act.<sup>75</sup>

The Court, in exercising its directive power for the enforcement of fundamental rights, recognized the need to penalize violators and use those fines for the rehabilitation of the children.<sup>76</sup> The decision, further, indicates the necessity of a joint effort of the central and the state governments.<sup>77</sup> Certainly, this directive leads India's child labor jurisprudence in the right direction by focusing and emphasizing the rights of every child.

---

71. *Id.*

72. *Id.*

73. *Id.* at 1028.

74. Child Labour (Prohibition and Regulation) Act, 1986 (India), available at <http://www.indianngos.com/issue/child/labour/legal/legal.html> (last accessed Oct. 7, 2003). The punishment is likely to include imprisonment of three months to one year or fine of anywhere between Rupees 10,000 to 20,000 (U.S. \$200 to \$400). These amounts and this law provide no deterrence and no restitution for the children. Before the penalty proceedings are imposed mens rea has to be established. For currency conversion, exchange rate used 50 rupees for every one dollar.

75. *Mehta v. State of Tamil Nadu* [1996] Supp. 9 S.C.R. 726, 747 (India).

76. *Id.*

77. MINISTRY OF LABOUR Report, *supra* note 65, at 1030.

#### 4. The Indian Constitution Provisions on Educational Opportunities

India's national policies fail to use "the 73rd and 74th Constitutional Amendments which provide significant opportunities for local community involvement in the elimination of child labour and the universalisation of primary education."<sup>78</sup> Furthermore, the 1986 Act fails to regard free education as an alternative for children who are unable to afford schooling and consider work as the only other option.

Article 24 of the Indian Constitution states that no children "below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment."<sup>79</sup> A complementary provision to Article 24 is Article 45 that requires the states "to provide free and compulsory education for all children until they complete the age of fourteen years."<sup>80</sup> Free and compulsory primary education "is a necessary, if not sufficient, condition for the elimination of child labour."<sup>81</sup> Additionally, Constitutional provisions under Article 39, subsections e and f, give protection to child laborers who suffer abuse because of performing work that is unsuitable for their age and strength.<sup>82</sup> These provisions of the Indian Constitution offer a framework for child labor law cases.

#### 5. Adoption of the International Instruments: CRC and Convention 182

India has ratified the CRC, but not Convention 182. Since India ratified the CRC on December 11, 1992, it means that more than a decade ago India "accepted the legal obligations of bringing its existing laws, policies and programmes in line with the international standards laid down by the [CRC]," and recognized the indivisible and inalienable rights of children.<sup>83</sup> India's ratification, however, was conditional upon a lethal declaration, which some argue leaves its commitment almost worthless.<sup>84</sup> The declaration states in full:

While fully subscribing to the objectives and purposes of the Convention, realizing that certain rights of the child, namely those pertaining to the economic, social and cultural rights can only be progressively implemented in the developing countries, subject to the extent of available resources and within the framework of

---

78. *Id.* at 1029.

79. BURRA, *supra* note 1, at 9. The other main legal instruments used to prescribe the age limits and regulate working conditions are the "Indian Factories Act and Indian Mines Act and their numerous amendments." MINISTRY OF LABOUR Report, *supra* note 65, at 1026.

80. *Id.*

81. BURRA, *supra* note 1, at 244.

82. *Id.* at 10. Article 39 is a directive principle of state policy. In particular, the language of Article 39(f) states the children "should receive opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity, and that children should be protected against moral and material abandonment."

83. MINISTRY OF LABOUR Report, *supra* note 65, at 1022.

84. WEISSBRODT, *supra* note 3, at 919.

international cooperation; recognizing that the child has to be protected from exploitation of all forms including economic exploitation; noting that for several reasons children of different ages do work in India; having prescribed minimum ages for employment in hazardous occupations and in certain other areas; having made regulatory provisions regarding hours and conditions of employment; and being aware that it is not practical immediately to prescribe minimum ages for admission to each and every area of employment in India -- the Government of India undertakes to take measures to progressively implement the provisions of Article 32, particularly paragraph 2(a),<sup>85</sup> in accordance with its national legislation and relevant international instruments to which it is a State Party.<sup>86</sup>

The declaration avoids immediate implementation of children's economic, social and cultural rights and in effect fails to protect the children from economic exploitation. The Indian Government supports its rationale for a progressive rather than immediate implementation of the CRC by arguing that it reflects the reality of many developing nations where children of different ages inevitably do work. The organizations that work closely with child laborers' issues<sup>87</sup> worry that this declaration in the name of flexibility and reality might hinder India from ever completely realizing the substance of the CRC.

In its declaration, India is particularly hesitant to fully adopt Article 32(2)(a), which calls for setting up a minimum age for admission to employment, though India does declare its intention to progressively implement a plan. Interestingly, Article 1 of ILO's 1973 Convention 138 concerning Minimum Age for Admission to Employment states that members commit to "pursue a national policy designed to ensure the effective abolition of child labour and to raise progressively the minimum age for admission to employment," but India has not ratified this convention, which contains provisions that mirror India's progressive implementation rationale.<sup>88</sup> It is evident that India should rethink its stand on convention 138, or otherwise risk accusations for being hypocritical and

---

85. See INSTRUMENTS, *supra* note 11, at 96-97. Article 32(2) states: "States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular: (a) Provide for a minimum age or minimum ages for admission to employment."

86. WEISSBRODT, *supra* note 3, at 919-20.

87. See discussion *infra* Section IV.A.1.

88. ILOLEX Database of International Labour Standards, *Convention Concerning Minimum Age for Admission To Employment* (adopted June 26, 1973), available at <http://www.ilo.org/ilolex/english/convdisp1.htm> (last accessed Oct. 29, 2003). 121 countries have already ratified Convention 138 (as of Mar. 15, 2003).

unfaithful to its commitment on child labor.<sup>89</sup>

## 6. Plan for Action

India's child labor policy initiative comprises: 1) a much needed legislative action plan; 2) a focus on building development programs that benefit children; and 3) a project-based action plan in places of high concentration of child laborers.<sup>90</sup> To strengthen the national commitment and amplify the voice of the international community, India can join its national initiatives with the international instruments for the sake of improving children's rights and to eradicate child labor.

## B. AN UNACKNOWLEDGED CHILD LABOR PROBLEM AND INADEQUATE LEGAL PROTECTION IN THE UNITED STATES OF AMERICA<sup>91</sup>

The United States has to recognize that child agricultural laborers require a "safe, dignified, and healthy start in life" like child laborers or workers in other sectors.<sup>92</sup>

### 1. Acknowledging the Child Labor (Ab)Use in the Agriculture Sector

The agriculture sector in the United States employs many young children where harsh working conditions prove detrimental to the children's health, such as exposure to machinery, biological and chemical agents.<sup>93</sup> Though it would be unlikely that child farmworkers' employers provide any health insurance,<sup>94</sup> the work usually entails "mixing, loading and applying pesticides, fertilizers or herbicides, some of which are highly toxic and potentially carcinogenic."<sup>95</sup>

---

89. It is worth noting that while Convention 138 and Convention 182 are complementary, one does not replace or revise the other. For instance, article 3(d) of Convention 182 covers "work which, by its nature or the circumstance in which it is carried out, is likely to harm the health, safety or morals of children," which differs from article 3(1) of Convention 138 dealing with employment or work which "is likely to jeopardize the health, safety or morals of young persons." The Convention 138 still remains the "bedrock of national and international action for the total abolition of child labour." *IPEC, supra* note 26. The adoption of one of the instruments "does not give an excuse to postpone or put aside any ongoing consideration" of the other. *Id.*

90. National Policy on Child Labour 1987, at <http://www.indiangos.com/issue/child/labour/govt/policies.html> (last accessed Oct. 8, 2003).

91. "Outside the United States, attention to the hazards faced by children in agriculture appears to be greatest in Scandinavia. At the US-Nordic Conference on Rural Childhood Injury Prevention in 1997, for example, representatives from Denmark, Norway, Sweden, and Finland concurred in identifying child farm injuries as a serious problem." Dorman, *supra* note 54, at 48.

92. *Id.*

93. WEISSBRODT, *supra* note 3, at 912. The hazard involved in agricultural work is similar around the world, be it a developing or a developed nation. *Id.*

94. U.S. DEPARTMENT OF LABOR BUREAU OF LABOR STATISTICS, REPORT ON YOUTH LABOR FORCE 54 (2000), [hereinafter LABOR FORCE REPORT].

95. WEISSBRODT, *supra* note 3, at 912. "Pesticides exposure poses a considerably higher risk to children than adults and has been linked to an increased risk of cancer, neuropathy, neuro-behavioral effects and immune system abnormalities." *Id.*



The reality of child farmworkers "provides ample evidence that [the United States] laws regarding children in agriculture are deficient, as they do not adequately protect children from hazardous, or otherwise abusive labor conditions."<sup>96</sup> To confirm this view, a Human Rights Watch report paints a grim picture:

Hundreds of thousands of children and teens labor each year in fields, orchards, and packing sheds across the United States. They pick lettuce and cantaloupe, weed cotton fields, and bag produce. They climb rickety ladders into cherry orchards, stoop low over chili plants, and "pitch" heavy watermelons for hours on end. Many begin their work days -- either in the fields or en route to the fields -- in the middle of the night. Twelve-hour workdays are common.<sup>97</sup>

The laws applicable to "youth employment in agriculture are different from the laws governing youth employment in other sectors."<sup>98</sup> The workers "in America's fields have some of the lowest-paying jobs in the country," and minors are paid even less than the adult farmworkers.<sup>99</sup> Moreover, these young farmworkers face multitude of problems, like "poor living and working conditions, loss of educational opportunities, separation from parental supervision, and exposure to pesticides and other occupational hazards."<sup>100</sup>

## 2. The Fair Labor Standards Act of 1938

The United States Department of Labor administers the Fair Labor Standards Act of 1938 (FLSA), which purports to prohibit all exploitative child labor in the United States. While FLSA limits the minimum employment age and the number of hours for most industries, "there is neither a minimum age requirement nor a limited hours standard in the case of agricultural work."<sup>101</sup> In essence, a child can begin farmwork at any age. Similar legal loopholes shortchange the child laborers in developing countries.<sup>102</sup>

## 3. FLSA Loopholes

FLSA is plagued with legal loopholes just like India's 1986 Act. First,

---

96. Reeves, *supra* note 45, at 12.

97. HRW Report 2000, *supra* note 2.

98. LABOR FORCE REPORT, *supra* note 94, at 52.

99. *Id.* at 54: "According to NAWS [National Agriculture Workers' Survey] data for 1993-98, teens were more prevalent in the lowest wage jobs."

100. *Id.* at 52. "Employment on a farm or in an orchard requires the use of sharp knives and other dangerous equipment, climbing of ladders, handling of toxic pesticides, and working outdoors, often at extreme temperatures for long hours." Reeves, *supra* note 45, at 12.

101. Reeves, *supra* note 45, at 12.

102. See discussion *supra* Part II.A.2.

Section 212(c) of the FLSA prohibits oppressive child labor in commerce, but Section 213 exempts “children employed in agriculture . . . from this prohibition.”<sup>103</sup> FLSA hopes to save young children from harsh farmworking conditions by providing a “particularly hazardous labor exception,” but children “working on farms owned or operated by their parents or by a person standing in the place of [their] parent[s]” are exempt from the exception in Section 213(c)(2).<sup>104</sup> This exemption is based on an assumption that unpaid family workers perform large proportion of farmwork, which is untrue of today’s reality where paid employment prevails.<sup>105</sup>

Second, young children are physically exploited in the name of economic efficiency on the fields. FLSA claims to prohibit “oppressive child labor,” yet permits child labor in agriculture to continue.<sup>106</sup> Also, permitting “agricultural employers to work children for unlimited hours . . . severely undermines [children’s] opportunity to participate fully in universal education.”<sup>107</sup>

Third, along with these deficiently protective laws for child farmworkers, they face de facto race-based discrimination, as a result of FLSA exemptions, since “an estimated 85 percent [of] . . . farmworkers nationwide are racial minorities.”<sup>108</sup> This causes equal protection concerns under the United States Constitution, and may violate provisions of international instruments.<sup>109</sup> The Constitutional protection of young farmworkers is not as fleeting as for the adult farmworkers because unlike the adult farmworkers, the young farmworkers were born in the United States, and are protected by the Constitution as all other citizens.<sup>110</sup>

#### 4. Failure of Other Laws and Government Agencies

Along with FLSA, other administrative agencies fail to provide protection to the young farmworkers. For instance, farms that employ less than eleven employees are exempt from enforcement of Occupational Safety and Health Administration (OSHA) regulations, and which even then devotes only three percent of its inspection to the agriculture sector.<sup>111</sup> Another administrative agency that has failed in protecting young farmworkers is the Environmental Protection Agency (EPA), which

---

103. 29 U.S.C.A. §§ 212-3 (West, WESTLAW through 1998). *See also* Reeves, *supra* note 45, at 12.

104. Reeves, *supra* note 45, at 13.

105. “While a significant proportion of agricultural work is still done by unpaid family workers, paid employment has become increasingly prevalent.” LABOR FORCE REPORT, *supra* note 94, at 52.

106. HRW Report 2000, *supra* note 2.

107. *Id.*

108. *Id.*

109. *Id.*

110. LABOR FORCE REPORT, *supra* note 94, at 53.

111. HRW Report 2000, *supra* note 2.

administers the use of pesticides on farms, but uses an adult male body to set up the thresholds, while children's small bodies are left vulnerable to pesticide-related dangers.<sup>112</sup> The cumulative effect of these seemingly innocuous provisions in the various laws works to the grave disadvantage of the child farmworkers.

## 5. The International Instruments

The United States' commitment to recognize full rights of children can be questioned based on its pending action on the CRC, which is one of the most widely ratified human rights treaties in the world. Although the United States is not a party to the CRC yet, the United States Senate officially entered Convention 182 into force on December 2, 2000.<sup>113</sup> Convention 182 is not a self-executing instrument.<sup>114</sup> For a nonself-executing international agreement, the United States comes "under an international obligation to adjust its laws and institutions as may be necessary to give effect to the agreement."<sup>115</sup> If, however, the United States Constitution or another previously enacted legislation is considered adequate, then it gives effect to an apparently nonself-executing international agreement without the need to adopt new legislation.<sup>116</sup>

### a. ILO's View on FLSA and Convention 182

Despite United States' assertion that its domestic laws, like FLSA, adequately satisfy the convention's provisions making congressional action unnecessary, it has failed to eliminate the worst forms of child labor that occur in the agriculture sector.<sup>117</sup> The Tripartite Advisory Panel on International Labor Standards that advised the Clinton Administration found United States' domestic law slightly different than Convention 182 regarding the definition of "hazardous" labor.<sup>118</sup> In 2003, the Committee of Experts of the ILO found the United States "in violation of Convention 182."<sup>119</sup>

---

112. *Id.* In 2000, the US General Accounting Office pressed EPA "to ensure that children who work on farms are protected" under the "Federal Insecticide, Fungicide and Rodenticide Act and the Federal Food, Drug and Cosmetic Act." *GAO Says EPA Needs To Act On Farm Pesticides, Children*, 18 No. 1 ANDREWS TOXIC CHEMICALS LITIG. REP. 8 ¶ 1 (2000), available at WL 18 NO. 1 ANTCLR 8.

113. Reeves, *supra* note 45, at 12. Note that India's situation is reversed where it is a party to the CRC and has not ratified Convention 182.

114. *Id.*

115. LOUIS HENKIN ET AL., INTERNATIONAL LAW: CASES AND MATERIALS 214 (3d ed. 2000).

116. *Id.*

117. Reeves, *supra* note 45, at 12.

118. *Id.* at 12: The Tripartite Advisory Panel "is the federal advisory committee mandated to determine whether conflicts exists between Convention 182's requirements and current domestic law and practice;" it found domestic law adequately adherent to Convention 182 provisions with an exception of definition of "hazardous" labor under FLSA.

119. Paul Germanotta, *International Standards on Child Labor: The ILO Cites a*

### b. The United States' View on FLSA and Convention 182

The United States narrowly construes what should be deemed as hazardous, while Article 3(d) of Convention 182 puts a broader ban on that which even remotely involves hazardous work.<sup>120</sup> The government interprets Convention 182 not to entail "farmwork as a general category . . . to be hazardous."<sup>121</sup> In spite of statistics indicating that young farmworkers account "for 40 percent of all work-related fatalities occurring among minors in the United States," its domestic law fails to provide equal protection in agricultural sector as it provides in one of the other dangerous sectors, mining.<sup>122</sup> Additional statistics indicate that young farmworkers are poor, rarely receive needs-based public assistance, and are at a high risk of dropping out of school.<sup>123</sup> In defending the current provisions of FLSA, the Bush Administration and the Department of Labor show no sign of acknowledging or heeding to the comments by the ILO's Committee of Experts.<sup>124</sup>

### c. The Reality in the Fields

Despite government rhetoric, the majority of the farmworkers are pre-teens and teens, although there are even younger children making their way to the fields. The young children, usually younger than five years old, of farmworker parents accompany them to the field since this is the only childcare option available to them.<sup>125</sup> In 1997, an advocacy group in Oregon, *Pineros y Campesinos Unidos del Noroeste*, noted that some of the fields could be mistaken for day care centers where small children emulated their parents and older siblings by "picking strawberries."<sup>126</sup> Even with such dire scenes, United States purports conformity with Convention 182 provisions.

## 6. Forcing Enforcing

There is ineffective enforcement of child labor laws and this violates Convention 182 because United States failed to act "with urgency to secure the prohibition and elimination of the worst forms of child labor."<sup>127</sup> The

---

*Surprising Offender*, FOREIGN POLICY IN FOCUS 1 (Nov. 5, 2003), at <http://www.presentdanger.org/commentary/2003/0311ilo.html> (last accessed Nov. 8, 2003).

120. See Reeves, *supra* note 45, at 12-13.

121. *Id.* at 12.

122. *Id.*

123. LABOR FORCE REPORT, *supra* note 94, at 53-54. The report states that more than 50 percent of teen farmworkers lived in households below the Federal poverty threshold. *Id.* at 53.

124. Germanotta, *supra* note 119, at 2. "The Bush administration, it seems, now intends to ignore the ILO's determination of U.S. noncompliance with the convention, while keeping it out of the public discourse." *Id.*

125. LABOR FORCE REPORT, *supra* note 94, at 56.

126. Dorman, *supra* note 54, at 47.

127. Reeves, *supra* note 45, at 12. See also Dorman, *supra* note 54, at 47.

ILO Committee of Experts on the Application of Convention and Recommendations (CEACR) commented upon an individual complaint made by the International Confederation of Free Trade Unions about United States' under-funded oversight tools, inadequate enforcement, and "inadequate penalties for employers who violate the law."<sup>128</sup> The complaint further noted that a 1997 federal government survey "revealed that some 290,000 children were working illegally, of whom the greatest number worked in the agricultural and horticultural sectors."<sup>129</sup> Despite the obvious hazardous nature of agricultural work, child labor laws in the United States regarding "minimum age, working hours, and overtime pay do not apply to agriculture."<sup>130</sup> Again, the United States domestic law blatantly discriminates against children farmworkers.

### III. BLUEPRINT FOR ACTION

In short, India should ratify and implement Convention 182 and fix the loopholes in the 1986 Act, and the United States should completely comport with provisions of Convention 182 and stop misrepresenting that FLSA substantively mirrors Convention 182 when in reality it conflicts in the basic definition of "hazardous." Once the national laws and international instruments are ratified to show full commitment of the nations towards eradicating child labor, a "campaign to create full, freely chosen and productive employment" is considered each nations' "ethical, social, political and economic" objective.<sup>131</sup> Constant monitoring and assessment will prove vital in application of the laws.<sup>132</sup> The governments of both developing and developed countries have to address the needs of the child laborers.<sup>133</sup>

#### A. INDIA'S ACTION PLAN

By ratifying Convention 182 and adopting Recommendation 190, India can dismiss some of the skepticism surrounding its commitment to progressively eliminate at least some if not all child labor. In 1999, ILO adopted Convention 182 as complementary to Convention 138 calling for "immediate and effective measures to secure the prohibition and

---

128. International Labour Standards Department at ILO, Committee of Experts on the Application of Conventions and Recommendations Individual Observation CEACR (2002), at <http://ilo.org/ilolex> [hereinafter CEACR]: "Some 14,000 children under the age of 14, some as young as nine, worked in garment "sweatshops." Underage children were also employed in such industries as meatpacking, construction and in sawmills and furniture factories."

129. *Id.*

130. *Id.*: "[B]etween 400 and 600 children working in agriculture suffer work-related injuries that are reported each year. In addition, between 1992 and 1996, 59 children lost their lives while working in agriculture."

131. WEISSBRODT, *supra* note 3, at 960.

132. *See id.*

133. *Id.*

elimination of the worst forms of child labour as a matter of urgency.”<sup>134</sup> Convention 182 takes a more narrow and focused approach than Convention 138. So far, 131 countries, including United States, have already ratified the convention and recognized the urgency of eliminating the most intolerable form of child labor.<sup>135</sup> All nations bordering India have ratified the convention, which through demographic effect might pressure India to do the same or else might worsen the child labor situation by attracting foreign employers to exploit children in India due to its lax policies.<sup>136</sup> In 2002, the Ministry of Labour urged the Indian government to ratify Convention 182 to avoid the charge of being incongruous in its policy to eliminate child labor by hesitating to eliminate its worst forms.<sup>137</sup>

The Indian delegation at several ILO sessions has called for “a cautious and realistic and reasonable approach” to deal with child labor problem.<sup>138</sup> Ratification of Convention 182 gives India an opportunity to embark on a targeted mission to combat child labor by eliminating the worst forms of it first. This will reaffirm its seriousness and commitment for a staggered approach to eradicate all child labor eventually. The Indian Ministry of Labour’s report asserts that the government has not ratified Convention 182 because “it feels that more tripartite consultations are necessary to identify occupations or processes that can be characterized as among the worst forms of child labour” and also India currently lacks the “necessary machinery to enforce the legislation.”<sup>139</sup> India should not stall ratification of Convention 182 for such reasons because ratification will lead to support from IPEC in setting up an infrastructure to enforce stricter child labor laws.

#### B. THE UNITED STATES’ ACTION PLAN

The United States should amend the FLSA<sup>140</sup> to fully comport with Convention 182, EPA should amend its standards, and OSHA should make more inspections on fields because farmwork involves hazards when the developing bodies of children are put through similar work as their adult counterparts.

---

134. *Eliminate Worst Forms*, *supra* note 48.

135. *See id.*

136. *See Eliminate Worst Forms*, *supra* note 48. The following countries bordering India have ratified Convention 182: Sri Lanka (March 2001), Bangladesh (March 2001), Pakistan (October 2001), Nepal (January 2002), and China (August 2002).

137. MINISTRY OF LABOUR Report, *supra* note 65, at 1025.

138. On the Record for Children, *Indian Proposal For The ‘Progressive Elimination’ of Child Labor Meets Resistance* (May 2, 2002), available at <http://www.ngosatunicef.org/OTR/v3/09.html#report> (last accessed Mar. 14, 2003).

139. MINISTRY OF LABOUR Report, *supra* note 65, at 1023.

140. Congress, so far, has failed to act, but “[i]n 2001, two legislative measure to amend the FLSA in order to toughen the regulation of child labor in hazardous employment were introduced in the 107<sup>th</sup> Congress: The Children’s Act for Responsible Employment [ ] and the Young American Workers’ Bill of Rights Act.” Germanotta, *supra* note 119, at 2.

The FLSA exceptions for the agriculture sector perpetuate the child labor problem. For example, the Department of Labor "cited only 104 cases of child labor violations in fiscal year 1998 . . . when the estimates are that there are approximately one million violations related to child labor in [the United States] agriculture [sector] each year."<sup>141</sup> Because of this failure to notice the presence and extent of the problem, the laws remain inadequate in substance and in enforcement efforts. The United States needs to fully address and focus on this child labor problem, otherwise the farmworking juveniles will continue to have second-class status and "be exploited while the government looks the other way."<sup>142</sup> The United States' laws and commitment to eliminate dangerous and worst forms of child labor faces similar deficiencies as a developing nation like India, and should instead provide equal protection to all child farmworkers who perform dangerous work.

#### IV. FORCE OF THE NON-GOVERNMENTAL ORGANIZATIONS

The non-governmental organizations (NGOs) are a recognized, if not indispensable, partners in the mission to eradicate child labor and promote children's rights. The role of the NGO is: (1) to raise awareness in all sectors, including educating politicians, teachers and judges; (2) to engage in discussions and generate social concern and activism among the masses; and (3) to serve as a check and reminder to the, oftentimes, dwindling political will.<sup>143</sup> ILO-IPEC framework recognizes and encourages participation of NGOs from all sectors, and collaboration with the labor administration, employers' and workers' organizations.<sup>144</sup>

##### A. INDIAN NGOS ACT TO SOLVE, ABOLISH, AND REHABILITATE

Kailash Satyarthi runs an NGO, South Asian Coalition on Child Servitude (SACCS), in India.<sup>145</sup> Started in 1989, SACCS has "released over 30,000 child slaves in secret raids across South Asia organized with the active cooperation of the judiciary and the bureaucracy."<sup>146</sup> One writer, Myron Weiner, indicated that the cause for prevalence of child labor in India is not shortage of resources, but the absence of passion among the

---

141. HRW Report 2000, *supra* note 2: "When violations are discovered and cited, growers frequently escape accountability by hiding behind the farm labor contractors they employ."

142. *Id.*

143. See Rosslyn Noonan, *Liberators Of Children*, EDUCATION INTERNATIONAL, at [http://www.ei-ie.org/pub/english/epbmag3-98.htm#Liberators of children](http://www.ei-ie.org/pub/english/epbmag3-98.htm#Liberators%20of%20children) (last accessed Mar. 14, 2003) [hereinafter Noonan].

144. See ILO, *Combating Child Labour: The Legal Framework*, at [http://www.ilo.org/public/english/standards/norm/whatare/cld\\_papr.htm](http://www.ilo.org/public/english/standards/norm/whatare/cld_papr.htm) (last accessed Oct. 20, 2003).

145. Noonan, *supra* note 143.

146. *Id.* Myron Weiner is the author of *The Child and the State in India*.

people who have power to make a difference.<sup>147</sup> Most NGOs would echo this concern, and NGOs' actions do speak louder than words.

Standing along a continuum of different ideas toward the child labor problem, all NGOs speak in one voice to promote the importance of action. For instance, SACCS believes in abolition of all child labor "without compromise" and asserts that poverty causes and does not result from child labor. On the other hand, Oxfam India, a branch of the international organization Oxfam, takes the position that banning all child labor will not help all the "poor children and their families," and thus works towards solving the problem of poverty, which it considers the root of child labor.<sup>148</sup> Moreover, Human Rights Watch (HRW) uses its resources towards the after-care of child laborers. It provides education and rehabilitation to children who are removed or rescued from performing manual, hazardous labor.<sup>149</sup>

Many aid agencies, including SACCS, believe that the Indian government overly emphasizes the link between poverty and child labor.<sup>150</sup> Despite India being a signatory to more than 120 ILO conventions that seek to eliminate child labor, the "lack of political will to implement a plethora of laws" is thought to be the source of inaction.<sup>151</sup> Campaign Against Child Labour, another leading NGO, specifically criticizes the poor implementation of the 1986 Act.<sup>152</sup> It believes that the enforcement is wanting, and the system and politicians are corrupt.<sup>153</sup> Politicians, in particular, benefit from child labor because many child laborers are employed in government-contracted work, which is a source of a number of human and labor rights violations.<sup>154</sup> Therefore, NGOs closely monitor government-run plans, and publicize government's dismal record and mount pressure to improve the conditions.<sup>155</sup>

#### B. UNITED STATES NGOS ACT TO IMPROVE CURRENT CONDITIONS

In the United States, the Association of Farmworker Opportunity Programs (AFOP) provides help to its member organizations: 1) to

---

147. Quoting from *Mehta*, *supra* note 75.

148. See Noonan, *supra* note 143. Also Oxfam India, *Child Labour In India*, at <http://www.oxfam.org.uk/coolplanet/kidsweb/world/India/indioxf3.htm> (last accessed Nov. 29, 2002).

149. Human Rights Watch, *Children's Rights*, at <http://www.hrw.org/campaigns/crp/promises/labor.html> (last accessed Oct. 17, 2003).

150. Rajyasri Rao, *India 'Losing' Child-Labour Battle*, BRIT. BROAD. CO. (May 6, 2002), at [http://news.bbc.co.uk/1/hi/world/south\\_asia/1970708.stm](http://news.bbc.co.uk/1/hi/world/south_asia/1970708.stm) (last accessed Oct. 3, 2003).

151. *Id.*

152. *Id.*

153. Humphrey Hawksley, *India's Child Labour Laws Failing*, BRIT. BROAD. CO. (Aug. 20, 2002), at [http://news.bbc.co.uk/1/hi/world/south\\_asia/2206026.stm](http://news.bbc.co.uk/1/hi/world/south_asia/2206026.stm) (last accessed Oct. 6, 2003).

154. *Id.*

155. *Id.*



advocate "for policies that benefit and protect agricultural workers;" and 2) "to improve the quality of life for migrant and seasonal farmworkers and their families."<sup>156</sup> The AFOP addresses the needs of child farmworkers, who are often without health insurance and at serious risk of "dropping out" of school.<sup>157</sup> Additionally, it seeks protection for farmworkers' family members, especially young children.<sup>158</sup> For instance, farmworker "parents report that their small children (aged 0 to 5 years) do not do farmwork" but that these children do go to the fields while the parents work.<sup>159</sup> As a result, these young children will also be exposed to hazardous chemical agents like their parents.<sup>160</sup> It also sees the need to fill a gap in the United States government's policies that leave out education and job training for farmworker youth, who are probably physically incapacitated as a side effect of farmwork, and left without any resources to seek another job.<sup>161</sup>

The HRW has also reported on the failings of the domestic law in the United States. Their reports document "a wide range of troubling practices—some legal under current, inadequate domestic law, some blatantly illegal—that affect juvenile farmworkers."<sup>162</sup>

On December 12, 2002, the Department of Labor issued a letter of intent to solicit cooperative agreement applications from developing nations such as Burkina Faso, Cambodia, and Brazil "to develop and implement formal, non-formal, and vocation education programs as a means to combat exploitative child labor,"<sup>163</sup> with a grant of \$30 million to be awarded by September 30, 2003.<sup>164</sup> An NGO working with farmworker children in the United States should also be able to apply for these grants since their working conditions and educational training might not be any better than of child laborers in above named countries. Elaine Chao, Secretary of Labor under the Bush Administration, whose executive head had vowed to leave 'no child behind,' should start by funding the education and job training programs at home.

---

156. ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAM, at <http://www.afop.org> (last accessed Nov. 15, 2003) [hereinafter AFOP]. See generally *id.* at <http://www.afop.org/links> (providing links to AFOP member organizations and other websites related to child labor).

157. ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAM, *Child Labor: The Impact on Education*, at [http://www.afop.org/child\\_labor/index.cfm?section=education](http://www.afop.org/child_labor/index.cfm?section=education) (last accessed Nov. 15, 2003) [hereinafter AFOP Education].

158. See AFOP, *supra* note 156.

159. LABOR FORCE REPORT, *supra* note 98, at 53-54.

160. ASSOCIATION OF FARMWORKER OPPORTUNITY PROGRAM, *Child Labor: The Impact on Health*, at [http://www.afop.org/child\\_labor/index.cfm?section=health](http://www.afop.org/child_labor/index.cfm?section=health) (last accessed Nov. 15, 2003) [hereinafter AFOP Health]. "Children tend to be more susceptible to pesticides because they absorb more pesticides per pound of body weight and because of their developing nervous system and organs." *Id.*

161. See generally, AFOP Education, *supra* note 157; See AFOP Health, *supra* note 160.

162. HRW Report 2000, *supra* note 2.

163. Child Labor Education Initiative, 67 Fed. Reg. 775-6 (Dec. 18, 2002), available at <http://www.dol.gov/ILAB/grants/education/FRNNoticeofintent2003.htm>.

164. *Id.*

The NGOs play a significant role in keeping the national government leaders, who purport to solve child labor problems but fail to act, in check. The NGOs try to prevent child laborers from ending up doubly victimized because of hazardous work conditions and a weak safety net of laws with major loopholes.

### CONCLUSION

The child labor problem plagues the globe affecting developing and developed nations alike. The economic status of country is no guarantee of adequate protection for children against hazardous and exploitative working conditions and terms. Children who are our potential future labor force are exploited early on as child laborers, and we face a rapidly depleting human resource. In the cases of India and the United States, it's time to truly adopt the words of the CRC and ratify Convention 182, and bring national laws in compliance with commitments made in international instruments. Unfortunately, there is no forum of self-representation for a child laborer. The adult agendas often, for various reasons, leave the children behind. Although child labor problem is complex and there is no one quick fix available to completely eliminate it, this should not deter the nations from taking immediate and urgent action, and adopting the international instruments and amending their national laws.

The leaders and adults of the developing and developed nations, with the uncompromising passion of the NGO community and strategic help from the ILO-IPEC team, have to *act now* to equally protect *all* child laborers from exploitative conditions by adopting, implementing and enforcing concrete rights. Every act taken today at least begins to peel away a layer of the complexity of the child labor problem.

\* \* \*